

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Monique West	Team: Squad #2	CCRB Case #: 201503426	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 04/17/2015 10:38 PM, Saturday, 04/18/2015	Location of Incident: 1st Precinct stationhouse	Precinct: 01	18 Mo. SOL 10/17/2016	EO SOL 10/17/2016	
Date/Time CV Reported Sat, 04/18/2015 4:36 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/30/2015 11:31 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM James Hart	19180	947065	001 PCT
2. POM Whittaker Young	17294	932085	001 PCT
3. Officers			
4. POM Robert Pepe	25068	946530	001 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Andriy Ryabinin	00000	939394	001 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Discourtesy: On April 17, 2015, officers spoke rudely to § 87(2)(b)	
B.POM Whittaker Young	Discourtesy: On April 17, 2015, PO Whittaker Young spoke rudely to § 87(2)(b)	
C.POM Whittaker Young	Discourtesy: On April 17, 2015, PO Whittaker Young acted rudely toward § 87(2)(b)	
D.POM James Hart	Force: On April 18, 2015, PO James Hart used physical force against § 87(2)(b)	
E.POM Robert Pepe	Discourtesy: On April 18, 2015, PO Robert Pepe spoke rudely to § 87(2)(b)	

Case Summary

On April 17, 2015, at approximately 10:38 p.m., § 87(2)(b) was arrested for petit larceny § 87(2)(b) by PO Jamie Brantmeyer of the 1st Precinct. At the stationhouse, § 87(2)(b) encountered PO Whittaker Young. PO Young and other unidentified officers allegedly spoke rudely to § 87(2)(b) (**allegations A and B**). PO Young later allegedly threw § 87(2)(b)'s clothing on the floor with the trash (**allegation C**). The next morning, in the cell area, § 87(2)(b) encountered PO James Hart and PO Robert Pepe. During their encounter, PO Hart punched § 87(2)(b) in the face (**allegation D**). When Lt. Andriy Ryabinin came in to assess the situation, PO Pepe allegedly told another prisoner identified through the investigation as § 87(2)(b) "Shut the fuck up" (**allegation E**). § 87(2)(b) was subsequently charged with § 87(2)(b) (Board Review 01). He pled guilty to OGA (Board Review 02).

Mediation, Civil and Criminal Histories

- Due to the open criminal case stemming from this incident, this case was not suitable for mediation.
- As of August 18, 2015, § 87(2)(b) has not filed a Notice of Claim regarding this incident (Board Review 03).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (Board Review 05).
- PO Young has been a member of the NYPD for 13 years, has had 10 previous CCRB allegations involving four cases with five substantiated allegations. In CCRB case #201214819, allegations that PO Young frisked and search individuals, searched a vehicle and spoke rudely to individuals were substantiated and charges were recommended by the board. The NYPD disposition is pending (see officer history).
- PO Hart has been a member of the NYPD for seven years, has had 11 previous CCRB allegations involving six cases with no substantiated allegations. In CCRB case #201113354, it was alleged that PO Hart punched an individual in the face. This allegation was closed as unsubstantiated. In CCRB case #201205752, it was alleged that PO Hart slammed a prisoner's head against the cell at the stationhouse. This allegation was closed as complainant uncooperative (see officer history).
- This is the first CCRB allegation against PO Pepe during his seven year tenure (see officer history).

Potential Issues

- § 87(2)(b) was identified as the other victim in this case because according to the prisoner holding pen roster he was the only other prisoner lodged in the cell area at the time of the incident; however, he did not cooperate with the investigation (Board Review 06).

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b) alleged that an officer who he could only describe as a white male told a prisoner to “shut the fuck up.” He stated that this officer was the one present when PO Hart punched him. PO Pepe admitted to being the only other officer present when PO Hart punched § 87(2)(b) § 87(2)(g)
- Although § 87(2)(b) stated that he felt punches from the front and the back and was not sure whether PO Pepe was involved; PO Hart admitted to being the only officer to strike § 87(2)(b) and PO Pepe corroborated this. § 87(2)(g)
- § 87(2)(b) stated that after he was arrested and placed in the holding cells at the 1st Precinct stationhouse, PO Young came to ask him if he was going to be fingerprinted. He alleged that he heard officers in addition to PO Young say, § 87(2)(b) come on fuck boy.” They also stated, “We got your ass again” and continued to call him other derogatory names that he could not recall. § 87(2)(b) could not identify these officers because he did not turn around to see who they were and could not identify them by their voices (Board Review 07). PO Young, the only officer he could identify, stated that he did not recall whether any other officers were in the cell area at the time. He also stated that he did not recall whether any officers used profanity towards § 87(2)(b) (Board Review 08).

Allegation A- Discourtesy: On April 17, 2015, officers spoke rudely to § 87(2)(b)

As discussed above, the investigation was unable to identify the officers who spoke rudely to § 87(2)(b) § 87(2)(g)

Allegation B- Discourtesy: On April 17, 2015, PO Whittaker Young spoke rudely to § 87(2)(b)

§ 87(2)(b) alleged that PO Young was one of the officers who called him “fuck boy” as discussed above.

PO Young denied calling § 87(2)(b) “fuck boy.”

§ 87(2)(g)

Allegation C- Discourtesy: On April 17, 2015, PO Whittaker Young acted rudely towards § 87(2)(b)

§ 87(2)(b) alleged that when he refused to be fingerprinted, PO Young threw his jacket, hat and other clothing on the floor with the trash and then left him in the cell.

PO Young denied touching § 87(2)(b)'s property or clothing while in the cell area. He denied throwing § 87(2)(b)'s hat or clothing on the floor.

§ 87(2)(g)

Allegation D- Force: On April 18, 2015, PO James Hart used physical force against § 87(2)(b)

It is undisputed that PO Hart punched § 87(2)(b) in his nose in the cell area, causing him to fall to the ground.

§ 87(2)(b) stated that after he was told that they could not transport him and brought him back in front of the cell, he began removing his belongings. § 87(2)(b) stated that he tried to take the strings out of his hood when he realized that the strings were stitched inside of his hood and could not be removed without ripping it. § 87(2)(b) was about to ask PO Hart to cut the strings out of his hood and demonstrated this by grabbing the string of his hood with two closed fists. PO Hart said, “What you’re not taking it off?” and grabbed his hood. § 87(2)(b) “flinched,” grabbing one side of his hood with two closed fists. He immediately felt multiple blows on his face and the back of his head. He could not estimate how many. § 87(2)(b) was in and out of consciousness and disoriented. The next thing he realized, he was on the floor.

PO Hart stated that he unzipped § 87(2)(b)’s sweatshirt when he refused to remove it. When he did this, § 87(2)(b) grabbed his right forearm and told him that if he touched him, he would spit in his face and give him AIDS. At the same time, § 87(2)(b)’s left hand was cocked back in a fist. Believing that § 87(2)(b) was going to punch him and with little room for retreat, he punched § 87(2)(b) in the nose. PO Hart stated that it happened fast but he believed that he only struck him once. He did not strike him anywhere else (Board Review 09).

PO Pepe corroborated PO Hart’s statement. He added that he yelled for PO Hart to stop and backed him up. He stated that he did this because he did not want the situation to escalate and was afraid that § 87(2)(b) would get up. He stated that PO Hart only punched § 87(2)(b) once and did not attempt to punch him again (Board Review 10). Lt. Ryabinin was not present when this occurred; however, he stated that he was told by both officers that § 87(2)(b) raised his hand and swung at PO Hart. PO Hart backed away and in response punched § 87(2)(b) to gain control of him (Board Review 11).

§ 87(2)(b) was taken to § 87(2)(b) from the stationhouse. Medical Records indicate that § 87(2)(b) had a distorted anatomy of the nose and tenderness to the right side of his face. He was diagnosed with bilateral nasal bone fractures (see medical records).

Patrol Guide Procedure 203-11 states only the amount of force necessary to overcome resistance will be used to effect an arrest or take a mentally ill or emotionally disturbed person into custody (Board Review 12).

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

Allegation E- Discourtesy: On April 18, 2015, PO Robert Pepe spoke rudely to § 87(2)(b)

§ 87(2)(b) [REDACTED] alleged that after he was punched, Lt. Ryabinin came in to find out what happened. When § 87(2)(b) [REDACTED] asked § 87(2)(b) [REDACTED] who was in the holding cells at the time, to explain what really happened, PO Pepe allegedly said, “Shut the fuck up.” As discussed above, § 87(2)(b) [REDACTED] refused to cooperate with the investigation.

PO Pepe denied telling a prisoner to “shut the fuck up” and PO Hart did not hear him make that statement. Lt. Ryabinin did not recall another prisoner being in the cell area at the time.

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

Squad: 2

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date